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Attorney For Plaintiffs, AARON WALKER and YOLONDA WALKER

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY KMK DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AARON WALKER, an individual;
YOLONDA WALKER, an individual,

Plaintiffs,

vs.

SPECIALIZED LOAN SERVICING, LLC, a
Delaware Limited Liability Company;
DEUTSCHE BANK NATIONAL TRUST
COMPANY, as TRUSTEE ON BEHALF OF
THE HOLDERS OF THE TERWIN
MORTGAGE TRUST 2006-9HGA, ASSET-
BACKED CERTIFICATES, TMTS SERIES
2006-9HGA, an entity of unknown form;
AXIS MORTGAGE & INVESTMENT, an
entity of unknown form; AXIS MORTGAGE
& INVESTMENTS, LLC, a Arizona Limited
Liability Company; BILTMORE BANK OF
ARIZONA, a banking institution; CHASE
HOME FINANCE LLC, a Delaware Limited
Liability Company; REGIONAL TRUSTEE
SERVICES CORPORATION, a Washington
Corporation; and DOES 1-10, inclusive,

Defendant(s).

Case No.

'08 CV 1411 H NLS

**APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

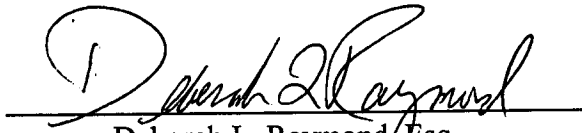
ORIGINAL

1 TO: DEFENDANTS, SPECIALIZED LOAN SERVICING, LLC; DEUTSCHE BANK
2 NATIONAL TRUST COMPANY, as TRUSTEE ON BEHALF OF THE HOLDERS OF THE
3 TERWIN MORTGAGE TRUST 2006-9HGA, ASSET-BACKED CERTIFICATES, TMTS SERIES
4 2006-9HGA; AXIS MORTGAGE & INVESTMENT; AXIS MORTGAGE & INVESTMENTS, LLC;
5 BILTMORE BANK OF ARIZONA; CHASE HOME FINANCE LLC; REGIONAL TRUSTEE
6 SERVICES CORPORATION; AND, THEIR ATTORNEY(S) OF RECORD:

7
8 PLEASE TAKE NOTICE THAT Plaintiffs hereby apply for a Temporary Restraining
9 Order ("TRO") and a Preliminary Injunction enjoining Defendants and their agents, assigns,
10 employees, officers, attorneys, and representative from engaging in or performing any act to deprive
11 Plaintiff of ownership or possession of the real property located at 7869 Bloomfield Road, San Diego,
12 California 92114 (hereinafter the "Property"), including but not limited to instituting, prosecuting, or
13 maintaining foreclosure or sale proceedings on the Property, from recording any deeds or mortgages
14 regarding the Property or from otherwise taking any steps whatsoever to deprive Plaintiff of ownership
15 in the Property, and in particular **from proceeding with the sale of the Property scheduled for**
16 **August 8, 2008.**

17 This Application is based on this Notice, and the Memorandum of Points and
18 Authorities, the declarations of Aaron Walker, Yolonda Walker, and Deborah L. Raymond, Esq. filed
19 herewith, and the pleadings, filings and other matters that may be presented at a hearing.

20 Dated: August 4, 2008

21
22 
23 Deborah L. Raymond, Esq.
24 Attorney for Plaintiffs
25
26

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Defendant(s).

Case No.

'08 CV 1411 H' NLS

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

ORIGINAL

1 PLAINTIFFS, Aaron Walker and Yolonda Walker ("Plaintiffs") submit this points and
2 authorities in support of their Application For Temporary Restraining Order ("TRO") and Preliminary
3 Injunction.

4 I. FACTUAL BACKGROUND

5 In 2005, Plaintiffs purchased Plaintiffs' residence. Shortly before July 2006, Plaintiffs
6 sought to refinance their residence located at 7869 Bloomfield Road, San Diego, California 92114
7 (hereinafter "Plaintiffs' Residence or the "Property"). Pursuant to a referral, Plaintiffs began working
8 with Lordsman, Inc. to obtain a refinance loan(s) of Plaintiffs' residence.
9

10 On July 12, 2006, a notary public arrived at Plaintiffs' residence with loan documents
11 that needed to be signed and notarized. Plaintiffs sat down with the notary public and as the notary
12 public flipped through the pages of the loan transaction documents, Plaintiffs signed where they were
13 told to sign and the notary public notarized documents that required notarization. The documents
14 signed by Plaintiffs consummated a consumer credit transaction ("Transaction") to refinance
15 Plaintiffs' Residence through a promissory note between Plaintiff Aaron Walker and defendant Axis
16 Div, in the amount of Four Hundred Twelve Thousand Dollars (\$412,000.00), secured by a first deed
17 of trust on Plaintiffs' Residence (the "Loan"). The purpose of the Transaction was primarily personal,
18 family and household in that it paid off the existing mortgages held by EMC Mortgage. The
19 Transaction was subject to a finance charge and was payable by written agreement in more than four
20 installments. At the time of consummation of the Transaction, Plaintiffs owned the Real Property and
21 were both on title.
22

23 Plaintiffs, in the course of the Transaction, signed numerous Transaction documents,
24 which were dated July 11, 2006. Immediately after Plaintiffs signed the Transaction documents, the
25 signed Transaction documents were taken by the notary public and Plaintiffs were given another
26

1 packet of documents and were told that the packet of documents were copies of the Transaction
2 documents Plaintiffs had just signed. Plaintiffs did not receive certain required Transaction
3 documents, including but not limited to two copies each of the notice of right to cancel. Instead,
4 Plaintiffs together received a total of two copies of a Notice of Right To Cancel for Aaron Walker and
5 no copies of a Notice of Right To Cancel for Yolonda Walker. *Declaration of Aaron Walker* ("Aaron
6 *Decl.*"), para. 5 and Exhibits "A-AW" and "B-AW"; *Declaration of Yolonda Walker* ("Yolonda
7 *Decl.*"), para. 5.

8
9 Through the Transaction documents Axis Div represented to Plaintiffs that their
10 monthly payment for the Loan, which included principal, interest, taxes and insurance would be
11 \$2,810.86 (the "false amount"). Said representation by Axis Div was false. Axis Div knew said
12 representation was false and made said representation to deceive Plaintiffs and entice Plaintiffs to
13 consummate the Transaction. Plaintiffs relied on Axis Div's false representations and but for said
14 representations would not have consummated the Transaction.

15 After July 12, 2006, but before May 29, 2007, defendant Chase Home Finance LLC
16 ("Chase") began servicing the Loan. On or about May 29, 2007, nearly 10 months after
17 consummating the Transaction, Plaintiffs were informed and discovered for the first time that the true
18 monthly payment for the Loan, which included interest only, taxes and insurance was \$3,183.66.
19 Since Plaintiffs had paid the false amount for nearly 10 months, Plaintiff were required to pay a new
20 monthly payment of \$3,331.57 for the Loan, which included interest only, taxes and insurance
21 effective 07/01/07. Plaintiffs were unable to afford the increased new monthly payment and became
22 behind on their payments for the Loan.

23
24 In February 2008, Plaintiffs were informed that the servicing for the Loan had been
25 transferred from defendant Chase to defendant Specialized Loan Servicing ("SLS").
26

1 On March 5, 2008, Plaintiffs, though their counsel, sent via First Class Certified U.S.
2 mail, a Qualified Written Request ("QWR") to defendants Chase and SLS.

3 Despite having knowledge that the Loan was disputed and being instructed to direct
4 all communicate to Plaintiffs' attorney only, on or about March 12, 2008 and again on or about March
5 13, 2008, defendant SLS communicated directly with Plaintiff Aaron Walker by sending him two
6 NOTICE OF INTENT TO FORECLOSE letters.

7 On March 19, 2008, after acknowledging receipt of Plaintiffs' authorization to discuss
8 the Loan with Plaintiffs' counsel, Chase responded to the QWR by requiring Plaintiffs to pay for
9 information requested in the QWR. More than 60 days have elapsed from the date Chase received
10 Plaintiffs' QWR and Chase has failed and refused to provide a written explanation or clarification to
11 the QWR as required by 12 U.S.C. §2605.

12 On April 17, 2008, a foreclosure proceeding was begun against Plaintiffs' Residence
13 by the recording of a Notice of Default in the office of the County Recorder.

14 On May 29, 2008, June 27, 2008 and July 31, 2008, pursuant to 15 U.S.C. §1635,
15 Plaintiffs rescinded the Transaction by sending the notice (Rescission Notice) required by Regulation
16 Z. *Declaration of Deborah L. Raymond* ("Raymond Decl."), Exhibits "A-TRO", "B-TRO", "C-
17 TRO".
18

19 More than twenty (20) days has elapsed from the date that defendants Deutsche and
20 SLS received the notice of rescission, and defendants Deutsche and SLS have failed and refused, and
21 continue to fail and refuse, to perform any of the acts required by 15 U.S.C. §1635(b). Even though
22 defendants Deutsche and SLS are aware of the rescission, contrary to complying the requirements of
23 TILA, have willfully and intentionally proceeded to immediately foreclose upon Plaintiffs' residence
24 by **scheduling a trustee's sale for August 8, 2008.**
25
26

1 In a letter dated July 21, 2008, defendant Chase acknowledged that defendant Deutsche
 2 was in receipt of the June 27, 2008 Rescission Notice and that additional time was need for defendants
 3 to review Plaintiffs' file. *Raymond Decl.*, para. 5 and Exhibit "D-TRO". Despite the fact that
 4 defendants Chase and Deutsche are reviewing Plaintiffs file regarding issues raised by Plaintiffs'
 5 Rescission Notice, defendants Deutsche and SLS have continued their willful attempt to foreclose
 6 upon Plaintiffs' Residence. **Only the issuance of a TRO, and then an injunction will prevent the**
 7 **imminent foreclosure sale of Plaintiffs' residence and give Plaintiffs the opportunity to be heard**
 8 **on the merits.**

9
 10 On August 4, 2008, Plaintiffs' attorney contacted defendants Chase and SLS in an
 11 attempt to postpone the sale while issues relating to Plaintiffs' rescission were addressed. *Raymond*
 12 *Decl.*, para. 6. On August 4, 2008, Plaintiffs filed herewith the above entitled Complaint, which
 13 contains a request to enjoin defendant Deutsche during the pendency of this action, and permanently
 14 thereafter, from instituting, prosecuting, or maintaining foreclosure proceedings on Plaintiffs'
 15 residence, from recording any deeds or mortgages regarding Plaintiffs' residence or from otherwise
 16 taking any steps to deprive Plaintiffs of ownership of Plaintiffs' residence.

17 II. ARGUMENT

18
 19 The purpose of a TRO is to preserve the status quo pending a full hearing on a
 20 preliminary injunction. *Bronco Wine Company v. United States Department of Treasury*, 997 F. Supp.
 21 1309, 1313 (E.D. Cal. 1996). A party seeking a TRO must satisfy the same test required for the
 22 issuance of a preliminary injunction. *Id.* A party seeking preliminary injunctive relief under Federal
 23 Rule of Civil Procedure 65 must show (1) a likelihood of success on the merits, (2) a significant threat
 24 of irreparable harm, (3) that the balance of hardships favor the applicant, and (4) whether any public
 25 interest favors granting an injunction. *Raich v. Ashcroft*, 352 F.3d 1222, 1227 (9th Cir. 2003)(citing
 26

1 *Dollar Rent A Car of Wash. Inc. v. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9th Cir. 1985)) *vacated*
 2 *and remanded on other grounds by Gonzalez v. Raich* 545 U.S. 1 (2005).

3 **A. THE MERITS OF PLAINTIFF'S CLAIMS**

4 TILA and Reg Z contain detailed disclosure requirements for consumer loans. A
 5 creditor's violation of TILA allows the borrower to rescind a consumer loan secured by the borrower's
 6 primary dwelling. *Semar v. Platte Valley Federal Savings & Loan Association*, 791 F.2d 699, 703-
 7 704 (9th Cir. 1986). Technical or minor violations of TILA or Reg Z, as well as major violations,
 8 impose liability on the creditor and entitle the borrower to rescind. *Id.* To insure that the consumer
 9 is protected[TILA and Reg Z must] be absolutely complied with and strictly enforced. *Id.*

10 **a. TILA VIOLATIONS**

11 Under TILA, certain documents, including but not limited to two Notices of Right to
 12 Cancel were required to be delivered in a timely manner to each of the Plaintiffs, in a form that they
 13 could keep. 15 U.S.C. § 1635; Reg. Z, 226.15, 226.17.

14 Plaintiffs did not receive two Notices of Right to Cancel each. Instead, Plaintiffs
 15 together received a total of two copies of a Notice of Right To Cancel for Aaron Walker and no copies
 16 of a Notice of Right To Cancel for Yolonda Walker. *Aaron Decl.*, para. 5 and Exhibits "A-AW" and
 17 "B-AW"; *Yolonda Decl.*, para.5.

18 The failure to provide the correct number of copies of the Notice of Right to Cancel
 19 to each of the Plaintiffs was a violation of TILA, which gave Plaintiffs the extended three year right
 20 of rescission as provided in TILA at 15 U.S.C. §1635 and Reg. Z, 226.15. *Id.*; *Semar v. Platte Valley*
 21 *Federal Savings & Loan Association*, 791 F.2d 699, 703-704 (9th Cir. 1986).

22 Plaintiffs exercised their right of rescission within three years. Therefore, the security
 23 interest upon which the Defendants' are basing their foreclosure sale is void.

24 **b. THE EFFECT OF RESCISSION IS THAT NO VALID SECURITY INTEREST EXISTS**

1 **UPON WHICH DEFENDANTS CAN MAINTAIN THEIR FORECLOSURE ACTION**

2 TILA and Reg Z specifically describe the steps that must occur and their timing once
3 a consumer rescinds. 15 U.S.C. §1635(b); Reg Z 226.23(d).

4 Step 1: Upon rescission by a consumer, the security interest (in this case **the deed of**
5 **trust) is automatically void** and the consumer owes no finance or other "charges". "Other" charges
6 include any closing costs even if they were paid to a third party. Reg Z, Official Staff Commentary,
7 226.23(d)(2)-1.
8

9 Step 2: Within 20 days of receipt of a consumer's notice of rescission, the creditor shall
10 return to the consumer any money or property given by the consumer and shall take any action
11 necessary or appropriate to reflect the termination of the security interest.

12 Step 3: Once the creditor performs its obligations, the consumer must tender the
13 balance due to the creditor.

14 Step 4: If the creditor does not take possession of the property within 20 days after
15 tender by the consumer, ownership in the property vests in the consumer.

16 Plaintiffs mailed their notice of rescission to defendant SLS on May 29, 2008, to
17 defendant Deutsche on June 27, 2008, and to defendant Axis Div on July 31, 2008. Under the
18 statutory scheme, the deed of trust against Plaintiffs' residence is void and defendant Deutsche had
19 20 days from the date of rescission to release the deed of trust.
20

21 The deed of trust that defendant Deutsche has based its foreclosure action upon is void
22 and unenforceable. **Yet, defendant Deutsche and SLS have scheduled a sale date of Plaintiffs'**
23 **residence for August 8, 2008.**

24 **B. PLAINTIFFS' WILL SUFFER IRREPARABLE HARM IF INJUNCTIVE RELIEF NOT**
25 **GRANTED**

26 **a. Loss of Personal Residence Is Irreparable Harm**

Defendants Deutsche and SLS are attempting to foreclose upon Plaintiffs' personal residence. If injunctive relief is not granted, Plaintiffs will suffer the irreparable harm of their home being sold and potentially lost to them forever. Plaintiffs' home is unique and if it is sold to a bona fide purchaser, Plaintiffs will be unable purchase the exact same home anywhere else. In addition, if defendants' foreclosure sale were permitted to happen, Plaintiffs and their four children would be forced to move from their home, and it would subject them to the irreparable harm of public humiliation and loss of reputation in the community in which they live and work. *Aaron Decl.*, para. 10; *Yolonda Decl.*, para. 10. If foreclosed upon, Plaintiffs would not know where their family would live and could be out on the streets. *Yolonda Decl.*, para. 10.

The imminent foreclosure of Plaintiff's residence presents a threat of irreparable harm. *See, Avila v. Stearns Lending, Inc.*, 2008 WL 1378231, at *3 (C.D. Cal. April 7, 2008); *see also, Wrobel v. S.L. Pope & Associates*, 2007 WL 2345036, at *1 (S.D. Cal. June 15, 2007); *Nichols v. Deutsche Bank Nat. Trust Co.*, 2007 WL 4181111, at *3 (S.D. Cal. Nov. 21, 2007).

b. Deprivation of TILA Rights Is Irreparable Harm

Permitting defendants to proceed with the foreclosure sale of Plaintiffs' residence could extinguish Plaintiffs' right of rescission and their claims against defendants.

TILA provides that the right of rescission is extinguished upon the transfer of the property. Reg. Z 226.23(a)(3); Reg Z, *Official Staff Commentary*, 226.23(a)(3). "A sale or transfer of the property need not be voluntary to terminate the right to rescind." Reg Z, *Official Staff Commentary*, 226.23(a)(3). "For example, a foreclosure sale would terminate an unexpired right to rescind." *Id.*

If Defendants are not enjoined from selling Plaintiffs' residence by foreclosure sale, Plaintiffs may suffer the irreparable harm of losing their TILA rights. If Plaintiffs prove violations of TILA, that they had the right to rescind, and that they suffered damages from defendants' violations

1 of TILA, Plaintiffs could be left with no remedy. Furthermore, failing to enjoin defendants would lead
 2 to Defendants being rewarded for disregarding Plaintiffs' rights.

3 Allowing defendants to proceed with the foreclosure sale and extinguish Plaintiffs'
 4 rights under TILA, could have far reaching ramifications, such as the negative effect of encouraging
 5 creditors to disregard Notices of Rescission from borrowers and immediately proceed to foreclosure
 6 in a race to sell the property at a Trustee's sale before the borrower could effectuate his rescission
 7 rights through the court process.

8 Based on the forgoing, if defendants are not enjoined, Plaintiffs will suffer irreparable
 9 harm from the loss of their personal residence and from the possible loss of their rights under TILA
 10 for which they will have no adequate remedy.

12 **C. THE BALANCE OF THE HARDSHIPS FAVORS PLAINTIFFS**

13 The irreparable harm Plaintiffs will suffer if their residence is sold through foreclosure
 14 far outweighs any harm to defendants. If the foreclosure sale is permitted to happen and Plaintiffs
 15 could have ultimately succeeded on the merits of their claims, Plaintiffs will have suffered irreparable
 16 harm. However, if Plaintiffs do not succeed on their claims, defendants would be free to continue
 17 with their foreclosure sale of Plaintiffs' residence.

18 Thus, if Plaintiffs do not prevail on their claims, defendants will have ultimately lost
 19 nothing in affording Plaintiffs the opportunity to have their claims adjudicated.

21 **D. PUBLIC INTEREST FAVORS GRANTING INJUNCTION**

22 The public interest will certainly be served by the issuance of injunctive relief in this
 23 case. To allow the foreclosure sale of Plaintiffs' home without first determining the validity of the
 24 underlying deed of trust undermines public interest. The documents given to Plaintiffs' at the
 25 consummation of the loan, along with Plaintiffs' notice of rescission received by defendants Deutsche
 26 and SLS raise serious doubts as to the validity of the deed of trust that is the subject of the foreclosure

1 proceedings. To allow the foreclosure proceeding to go any further will not only be a gross injustice,
2 but will violate all notions of public policy as well as frustrating the clearly expressed intent of
3 Congress in providing for the rescission remedy in TILA.

4 **E. NO ADDITIONAL SECURITY SHOULD BE REQUIRED FROM PLAINTIFFS**

5 Rule 65(c) requires that in order for a restraining order or preliminary injunction to be
6 issued, a security must be given by the applicant, in such sum as the court deems proper. FRCP 65(c).
7 Defendants have not removed the security interest, i.e., deeds of trust from Plaintiffs' residence, and
8 continue to maintain said interest in Plaintiffs' residence. In addition, Plaintiffs have a high likelihood
9 of success on the merits, which tips in favor of minimal or no bond at all. *Van De Kamp v. Tahoe*
10 *Regional Planning Agency*, 766 F.2d 1319, 1326 (9th Cir. 1985).

11 Plaintiffs request that the Court find that the deed of trust, which defendants have failed
12 and refused to remove, and continue to maintain is sufficient security to meet the requirements of
13 FRCP 65(c) and no additional security will be required from Plaintiffs.

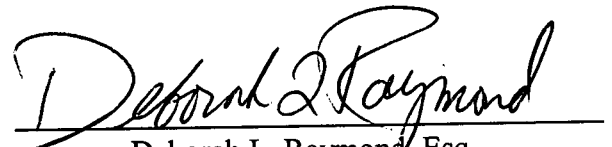
14 **III. CONCLUSION**

15 Plaintiffs respectfully submit that they have shown that a TRO, and then, a preliminary
16 injunction should issue because while comparatively great harm may result from withholding this
17 relief, little injury will flow from granting it. Further, Plaintiffs respectfully submit on its face,
18 Plaintiffs' case has sufficient merit to support a finding that the status quo should be preserved until
19 the controversy can be disposed of on the merits.

20 Plaintiffs request that the Court grant the TRO and then the preliminary injunction to
21 restrain and enjoin defendants, their agents, assigns, employees, officers, attorneys, and representatives
22 and those in active concert or participation with defendants or them, pending trial of this action, from
23 engaging in or performing any act to deprive Plaintiffs of their ownership and/or possession of the real
24 property located at 7869 Bloomfield Road, San Diego, California 92114, including but not limited
25
26

1 to instituting, prosecuting, or maintaining foreclosure or sale proceedings on Plaintiffs' residence,
2 from recording any deeds or mortgages regarding Plaintiffs' residence or from otherwise taking any
3 steps whatsoever to deprive Plaintiffs of ownership and/or possession in Plaintiffs' residence, and in
4 **particular from proceeding with the sale of Plaintiffs' residence scheduled for August 8, 2008.**

5 Date: August 4, 2008

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8 Deborah L. Raymond, Esq.
9 Attorney for Plaintiffs
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Case No.

'08 CV 1411 H NLS

**DECLARATION OF PLAINTIFF
YOLONDA WALKER IN SUPPORT OF
PLAINTIFFS' APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

ORIGINAL

1 I, YOLONDA WALKER hereby declare:

2 1. I am a Plaintiff in the above entitled action.

3 2. I have personal knowledge of all things stated in this declaration except as to those
4 things stated on information and belief, and as to those things, I believe them to be true. I could
5 testify competently to these things if called to as a witness in court.
6

7 3. In 2005, my husband, Aaron Walker, and I purchased our home located at 7869
8 Bloomfield Road, San Diego, California 92114 ("our residence"). Shortly before July 2006, my
9 husband and I sought to refinance our home. We began working with Lordsman, Inc. to obtain a
10 refinance of our residence.

11 4. On July 12, 2006, a notary public came to our residence with loan papers that
12 needed to be signed and notarized. My husband and I sat down at the table with the notary public and
13 as the notary public flipped through the pages of the loan papers, my husband and I signed where we
14 were told to sign and the notary public notarized some of the loan papers. The purpose of the
15 refinance was to pay off two existing mortgages with EMC Mortgage, a car loan, and to get some cash
16 out to make some improvements to our residence.
17

18 5. On July 12, 2006, immediately after my husband and I signed the loan documents,
19 the signed documents were taken by the notary public and we were given another packet of documents
20 and were told that the packet of documents were copies of the documents that we just signed. My
21 husband and I did not receive two copies each of the notice of right to cancel. Instead, we together
22 received a total of two copies of a Notice of Right To Cancel for my husband and no copies of a
23 Notice of Right To Cancel for me. A copy of the only two copies of the Notice of Right to Cancel
24 that we received are attached to my husband's declaration as Exhibits "A-AW" and "B-AW".
25

26 6. The loan documents that we signed represented that the monthly payment for the
27 first loan, which included principal, interest, taxes and insurance, would be \$2,810.86. I believed that
28

1 representation to be true and relied upon that representation when I agreed to sign the loan papers.
2 About 10 months later I learned that the monthly payments of \$2,810.86 was false and that the
3 monthly payment for the first loan was much higher. Since we had paid the incorrect amount for over
4 10 months, Chase required my husband to now pay \$3,331.57 per month for the first loan. Although
5 we had been able to make the monthly payment of \$2,810.86, due to the increase in the amount, we
6 were unable to make the payments and we fell behind.
7

8 7. In April 2008, I was informed that a Notice of Default was recorded against our
9 residence.

10 8. In May 2008, I signed a statement of my wish to cancel the loan transaction.

11 9. At the end of July 2008, despite the fact that the statement I signed to cancel the loan
12 had been received by defendants, I was informed that a Notice of Trustee's Sale had been recorded
13 against our residence. The Notice of Trustee's Sale states that a sale date for our residence is
14 scheduled for August 8, 2008.
15

16 10. I do not want to lose our home. If defendants sell our home through foreclosure,
17 I believe that our home will be lost to me, my husband and our four children forever. Our home is
18 unique and my husband and I have made it a comfortable place for ourselves and our four children
19 to live. If we are forced out of our residence, I do not know where we will live. If defendants are
20 permitted to foreclose and I am forced to leave our home, it will subject me to humiliation and loss
21 of reputation in my community and among my family, friends, and co-workers.
22

23 11. I respectfully request that the Court preserve the status quo and grant our request
24

25 ///

26 ///

27 ///

28 ///

1 for a Temporary Restraining Order and then, a preliminary injunction to prevent defendants from
2 foreclosing and selling our home before our claims are heard by the Court.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of
4 my knowledge. Executed this 4th day of August 2008, at San Diego, California.
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9 YOLONDA WALKER
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Attorney For Plaintiffs, AARON WALKER and YOLONDA WALKER,

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SOUTHERN DISTRICT OF CALIFORNIA**

KNH

DEPUTY

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entity of unknown form; AXIS MORTGAGE
& INVESTMENTS, LLC, a Arizona Limited
Liability Company; BILTMORE BANK OF
ARIZONA, a banking institution; CHASE
HOME FINANCE LLC, a Delaware Limited
Liability Company; REGIONAL TRUSTEE
SERVICES CORPORATION, a Washington
Corporation; and DOES 1-10, inclusive,

Defendant(s).

Case No.

'08 CV 1411 H NLS

**DECLARATION OF PLAINTIFF AARON
WALKER IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

ORIGINAL

1 I, AARON WALKER hereby declare:

2 1. I am a Plaintiff in the above entitled action.

3 2. I have personal knowledge of all things stated in this declaration except as to those
4 things stated on information and belief, and as to those things, I believe them to be true. I could
5 testify competently to these things if called to as a witness in court.
6

7 3. In 2005, my wife, Yolonda Walker, and I purchased our home located at 7869
8 Bloomfield Road, San Diego, California 92114 ("our residence"). Shortly before July 2006, my wife
9 and I sought to refinance our home. We began working with Lordsman, Inc. to obtain a refinance of
10 our residence.
11

12 4. On July 12, 2006, a notary public came to our residence with loan papers that
13 needed to be signed and notarized. My wife and I sat down at the table with the notary public and as
14 the notary public flipped through the pages of the loan papers, my wife and I signed where we were
15 told to sign and the notary public notarized some of the loan papers. The purpose of the refinance was
16 to pay off two existing mortgages with EMC Mortgage, a car loan, and to get some cash out to make
17 some improvements to our residence.
18

19 5. On July 12, 2006, immediately after my wife and I signed the loan documents, the
20 signed documents were taken by the notary public and we were given another packet of documents
21 and were told that the packet of documents were copies of the documents that we just signed. My wife
22 and I did not receive two copies each of the notice of right to cancel. Instead, we together received
23 a total of two copies of a Notice of Right To Cancel for me and no copies of a Notice of Right To
24 Cancel for my wife. A copy of the only two copies of the Notice of Right to Cancel are herein
25 attached and incorporated by reference as Exhibits "A-AW" and "B-AW".
26

27 6. The loan documents that we signed represented that the monthly payment for the
28 first loan, which included principal, interest, taxes and insurance, would be \$2,810.86. I believed that

1 representation to be true and relied upon that representation when I agreed to sign for the loan. About
2 10 months later I learned that the monthly payments of \$2,810.86 was false and that my monthly
3 payment for the first loan was much higher. Since we had paid the incorrect amount for over 10
4 months, Chase required me to now pay \$3,331.57 per month for the first loan. Although we had been
5 able to make the monthly payment of \$2,810.86, due to the increase in the amount, we were unable
6 to make the payments and we fell behind.
7

8 7. In April 2008, I was informed that a Notice of Default was recorded against our
9 residence.

10 8. In May 2008, I signed a statement of my wish to cancel the loan transaction.

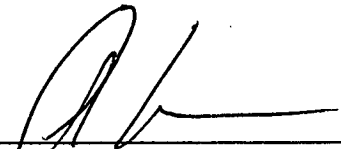
11 9. At the end of July 2008, despite the fact that the statement I signed to cancel the loan
12 had been received by defendants, I was informed that a Notice of Trustee's Sale had been recorded
13 against our residence. The Notice of Trustee's Sale states that a sale date for our residence is
14 scheduled for August 8, 2008. A copy of the Notice of Trustee's Sale is herein attached and
15 incorporated by reference as Exhibit "C-AW".
16

17 10. I do not want to lose our home. If defendants sell our home through foreclosure,
18 I believe that our home will be lost to me, my wife and our four children forever. Our home is unique
19 and my wife and I have made it a comfortable place for ourselves and our four children to live. I do
20 not believe that we will be able to purchase the exact same home anywhere else. Although I have
21 lived in San Diego for several years, this is the first home we have ever bought. San Diego is a
22 community in which I live and work. If defendants are permitted to foreclose and I am forced to leave
23 our home, it will subject me to humiliation and loss of reputation in my community and among my
24 family, friends, and co-workers.
25

26 11. I respectfully request that the Court preserve the status quo and grant our request
27 for a Temporary Restraining Order and then, a preliminary injunction to prevent defendants from
28

1 foreclosing and selling our home before our claims are heard by the Court.

2 I declare under penalty of perjury that the foregoing is true and correct to the best of
3 my knowledge. Executed this 4th day of August 2008, at San Diego, California.

4
5
6
7 
8 AARON WALKER

NOTICE OF RIGHT TO CANCEL

Loan Number: 2301597312

Borrowers: AARON WALKER

Property Address: 7869 BLOOMFIELD ROAD, SAN DIEGO, CALIFORNIA 92114

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage, lien or security interest on or in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

1. the date of the transaction, which is JUL 12 2006 ; or
2. the date you receive your Truth in Lending disclosures; or
3. the date you receive this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on or in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at
 AXIS MORTGAGE & INVESTMENTS, A DIVISION OF THE BILTMORE BANK OF ARIZONA
 1201 S. ALMA SCHOOL RD., SUITE 3700
 MESA, ARIZONA 85210

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of JUL 15 2006 (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature _____ Date _____
 AARON WALKER

ACKNOWLEDGMENT OF RECEIPT

EACH OF THE UNDERSIGNED HEREBY ACKNOWLEDGES THE RECEIPT OF TWO (2) COMPLETED COPIES OF THIS NOTICE OF RIGHT TO CANCEL.

THE UNDERSIGNED ENTERS INTO THE EXECUTION OF THIS DOCUMENT SOLELY FOR THE PURPOSE OF PERFECTING NOTE HOLDER'S SECURITY INTEREST IN SUBJECT PROPERTY.

AARON WALKER _____ Date _____

YOLONDA L. WALKER _____ DATE _____

NOTICE OF RIGHT TO CANCEL

Loan Number: 2301597312

Borrowers: AARON WALKER

Property Address: 7869 BLOOMFIELD ROAD, SAN DIEGO, CALIFORNIA 92114

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a mortgage, lien or security interest on or in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

1. the date of the transaction, which is JUL 12 2006 ; or
2. the date you receive your Truth in Lending disclosures; or
3. the date you receive this notice of your right to cancel.

If you cancel the transaction, the mortgage, lien or security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the mortgage, lien or security interest on or in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing, at
 AXIS MORTGAGE & INVESTMENTS, A DIVISION OF THE BILTMORE BANK OF ARIZONA
 1201 S. ALMA SCHOOL RD., SUITE 3700
 MESA, ARIZONA 85210

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of JUL 15 2006 (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature _____ Date _____
 AARON WALKER

ACKNOWLEDGMENT OF RECEIPT

EACH OF THE UNDERSIGNED HEREBY ACKNOWLEDGES THE RECEIPT OF TWO (2) COMPLETED COPIES OF THIS NOTICE OF RIGHT TO CANCEL.

THE UNDERSIGNED ENTERS INTO THE EXECUTION OF THIS DOCUMENT SOLELY FOR THE PURPOSE OF PERFECTING NOTE HOLDER'S SECURITY INTEREST IN SUBJECT PROPERTY.

AARON WALKER _____ Date _____

YOLONDA L. WALKER _____ DATE _____

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

REGIONAL TRUSTEE SERVICES CORPORATION
616 1st Avenue, Suite 500
Seattle, WA 98104



YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 7/11/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE OF TRUSTEE'S SALE

Trustee's Sale No. 05-FSL-56977

On August 8, 2008, at 10:00 AM, AT THE SOUTH ENTRANCE TO THE COUNTY COURTHOUSE, 220 WEST BROADWAY, in the City of SAN DIEGO, County of SAN DIEGO, State of CALIFORNIA, REGIONAL SERVICE CORPORATION, a California corporation, as duly appointed Trustee under that certain Deed of Trust executed by AARON WALKER, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, as Trustors, recorded on 7/18/2006, as Instrument No. 2006-0502701, of Official Records in the office of the Recorder of SAN DIEGO County, State of CALIFORNIA, under the power of sale therein contained, **WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER**, for cash, or cashier's check (payable at the time of sale in lawful money of the United States) without warranty express or implied as to title, use, possession or encumbrances, all right, title and interest conveyed to and now held by it as such Trustee, in and to the following described property situated in the aforesaid County and State, to-wit:

TAX PARCEL NO. 581-462-22

From information which the Trustee deems reliable, but for which Trustee makes no representation or warranty, the street address or other common designation of the above described property is purported to be 7869 BLOOMFIELD ROAD, SAN DIEGO, CA 92114.

Said property is being sold for the purpose of paying the obligations secured by said Deed of Trust, including fees and expenses of sale. The total amount of the unpaid principal balance, interest thereon, together with reasonably estimated costs, expenses and advances at the time of the initial publication of the Notice of Trustee's Sale is \$444,453.16.

Dated: 7/18/2008

REGIONAL SERVICE CORPORATION, Trustee

By


KIMBERLEY HICKMAN, AUTHORIZED AGENT

Agent for Trustee: AGENCY SALES AND POSTING
3210 EL CAMINO REAL SUITE 200
IRVINE, CA 92602

Telephone Number: (800) 542-2550

Sale Information: (714) 259-7850 or <http://www.rtrustee.com>

CA NOTS

LAW OFFICES OF DEBORAH L. RAYMOND
Deborah L. Raymond, SBN 173528
445 Marine View Avenue, Suite 305
Del Mar, CA 92014
(858) 481-9559

Attorney For Plaintiffs, AARON WALKER and YOLONDA WALKER

FILED

2008 AUG -4 PM 3: 35

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VCW DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AARON WALKER, an individual;
YOLONDA WALKER, an individual,

Plaintiffs,

vs.

SPECIALIZED LOAN SERVICING, LLC, a
Delaware Limited Liability Company;
DEUTSCHE BANK NATIONAL TRUST
COMPANY, as TRUSTEE ON BEHALF OF
THE HOLDERS OF THE TERWIN
MORTGAGE TRUST 2006-9HGA, ASSET-
BACKED CERTIFICATES, TMTS SERIES
2006-9HGA, an entity of unknown form;
AXIS MORTGAGE & INVESTMENT, an
entity of unknown form; AXIS MORTGAGE
& INVESTMENTS, LLC, a Arizona Limited
Liability Company; BILTMORE BANK OF
ARIZONA, a banking institution; CHASE
HOME FINANCE LLC, a Delaware Limited
Liability Company; REGIONAL TRUSTEE
SERVICES CORPORATION, a Washington
Corporation; and DOES 1-10, inclusive,

Defendant(s).

Case No.

'08 CV 1411 H NLS

**DECLARATION OF DEBORAH L.
RAYMOND, ESQ. IN SUPPORT OF
PLAINTIFF'S APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

ORIGINAL

1 I, DEBORAH L. RAYMOND hereby declare:

2 1. I am an attorney duly admitted to practice law as a member of the State Bar of
3 California and I am admitted to practices in the Southern District of California and all courts of the
4 State of California. I am a sole practitioner with offices located at 445 Marine View Avenue, Suite
5 305, Del Mar, California 92014. The following declaration is based upon my personal knowledge
6 such that if called as a witness, I could competently testify thereto.

7
8 3. I represent Aaron Walker and Yolonda Walker ("Plaintiffs") regard their claims
9 against Specialized Loan Servicing, LLC ("SLS"); Deutsche Bank National Trust Company, as
10 Trustee on behalf of the Holders of the Terwin Mortgage Trust 2006-9HGA, Asset-Backed
11 Certificates, TMTS Series 2006-9HGA ("Deutsche"); Axis Mortgage & Investment ("Axis Div");
12 Axis Mortgage & Investments, LLC; Biltmore Bank of Arizona; Chase Home Finance LLC ("Chase");
13 Regional Trustee Services Corporation ("Defendants") relating to a loan transaction entered into on
14 July 12, 2006, which created a security interest pursuant to a first deed of trust against Plaintiffs'
15 principal residence (the "Transaction").

16 4. On May 29, 2008, I mailed a Notice of Rescission to defendant SLS. On June 27,
17 2008, I mailed a Notice of Rescission to defendant Deutsche. A copy of the Notices of Rescission
18 to SLS and Deutsche, along with copies of proof of delivery are attached hereto and incorporated by
19 reference as Exhibits "A-TRO" and "B-TRO". On July 31, 2008, I mailed a Notice of Rescission to
20 defendant Axis Div. A copy of the Notice of Rescission to Axis Div is attached hereto and
21 incorporated by reference as Exhibit "C-TRO."

22
23 5. On or about July 21, 2008, I received a Notice of Trustee's Sale for Mr. and Mrs.
24 Walker's home, which indicated that the sale was scheduled for August 8, 2008. Shortly after
25 receiving the Notice of Trustee's Sale, I received a letter dated July 21, 2008 from defendant Chase,
26

1 which stated that defendant Deutsche had forwarded the June 27, 2008 correspondence to Chase and
2 that in order to address the issues that were raised, additional time was required while they review my
3 client's loan file. A copy of the letter that I received from Chase dated July 21, 2008 is attached hereto
4 and incorporated by reference as Exhibit "D-TRO".

5 6. On August 4, 2008, I telephoned defendants Chase and SLS in an attempt to
6 postpone the sale while issues relating to Plaintiffs' rescission were addressed. I spoke with Irene, and
7 then Aimee at SLS, before being transferred to the voicemail box of a supervisor named Greg Reed.
8 I left Mr. Reed a message to call me back as soon as possible to discuss postponing the foreclosure
9 sale scheduled on my clients' property. I also spoke with Sandra a Chase' Executive Resolution
10 Group. She stated that she need to get more information about who was servicing the loan and would
11 get back to me. I informed her that because of the timing I would need to file an application for a
12 temporary restraining order if I did not hear right back from her. As of the signing of this declaration,
13 I have not heard further from anyone at SLS or Chase.
14

15 7. Copies of the three cases referenced in the memorandum of points and authorities
16 filed herewith are hereto attached as follows:

17 Exhibit "E-TRO": *Avila v. Stearns Lending, Inc.*, 2008 WL 1378231 (C.D. Cal. April 7, 2008);

18 Exhibit "F-TRO": *Wrobel v. S.L. Pope & Associates*, 2007 WL 2345036 (S.D. Cal. June 15, 2007);

19 Exhibit "G-TRO": *Nichols v. Deutsche Bank Nat. Trust Co.*, 2007 WL 4181111 (S.D. Cal. Nov. 21,
20 2007).
21

22 8. I respectfully request that this Court issue an immediate TRO, and then a

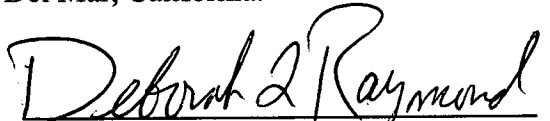
23 ////

24 ////

25 ////
26

1 Preliminary Injunction to prevent the imminent foreclosure sale of my clients' residence and give my
2 clients the opportunity to have their claims heard on the merits.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of
4 my knowledge. Executed this 4th day of August 2008, at Del Mar, California.

5 
6 DEBORAH L. RAYMOND, ESQ.
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Law Offices of Deborah L. Raymond

445 Marine View Avenue, Suite 305

Del Mar, CA 92014

Tel: 858-481-9559

Fax: 858-724-0747

May 29, 2008

SENT VIA FIRST CLASS CERTIFIED U.S. MAIL

Certified Receipt# 7007 1490 0003 2626 3125

S.L.S.

8742 Leucet Blvd., #300

Highland Ranch, CO 80129

7007 1490 0003 2626 3125

Re: Aaron & Yolonda Walker
SLS Account No. 1002871432
Chase Loan No. 0023780513
Property Address: 7869 Bloomfield Road, San Diego, California 92114
NOTICE OF RESCISSION OF MORTGAGE/LOAN

Dear Sir or Madam:

This office represents Aaron Walker and Yolonda Walker in their claims against Specialized Loan Servicing, LLC and Chase Home Finance LLC, and their assigns, servicers, agents, principals, subsidiaries and/or the holder/owner of the note for the above referenced loan (hereinafter referred to as "Creditor"). Enclosed is a copy of a Letter of Designation And Authorization signed by my client. All further communications must be directed to this office only. The debt associated with the above referenced real estate loan number is hereby disputed.

NOTICE OF RESCISSION OF MORTGAGE

Consumers, Aaron Walker and Yolonda Walker (hereinafter referred to as "Consumer"), base the following upon the understanding that Creditor is subject to the Truth In Lending Act (hereinafter "TILA"), and hereby exercise his rights under the Truth In Lending Act (15 U.S.C. §1601 et seq.), Regulation Z (12 C.F.R. § 226.1 et seq.), and related statutes and California state laws, which may include, without limitation, RESPA and California Finance Lenders laws, to rescind the above referenced loan. Without limitation, Consumer bases his right to rescind upon

Page 1 of 3

the fact that required disclosures pursuant to 15 USC §1601 et seq. were not provided to the Consumer, including but not limited to, two copies of a Notice of Right To Cancel containing all required information.

We are prepared to discuss a tender obligation, should it arise, and satisfactory ways in which my clients may meet this obligation. Please be advised that if you do not cancel the security interest and return all consideration paid by my client within 20 days of receipt of this letter, you could be responsible for actual and statutory damages pursuant to 15 U.S.C. § 1640(a).

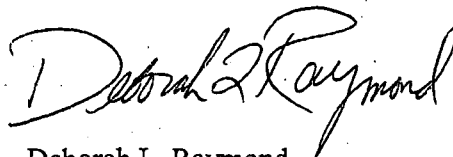
Additionally, pursuant to 15 U.S.C. § 1641(f)(2), request is hereby made for the name, address, and telephone number of the master servicer, all the mortgage holders, all the note/loan holders, and all the owners of the loan described above. Furthermore, we are awaiting your response to the QUALIFIED WRITTEN REQUEST mailed to you on March 5, 2008.

Demand is hereby made for verification of the alleged debt. Request is also made for an immediate written description of all information, data, or other documentation that you believe would disprove that this loan is in violation of TILA, RESPA, and/or California Finance Lenders laws and subject to rescission.

If you are not currently the holder/owner of the loan, we hereby request that you immediately forward this Notice of Rescission to the holder/owner of the loan or immediately provide this office with the name, address, and telephone number of the current holder/owner of the loan.

Be advised that any action taken against my clients, including but not limited to any collection actions, any recording of any foreclosure instrument, including any Notice of Trustee's Sale, or any other foreclosure action which violates federal and/or state laws will be construed as willful and malicious actions, and will be extremely injurious to my clients.


Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah L. Raymond".

Deborah L. Raymond
Attorney for Aaron & Yolonda Walker

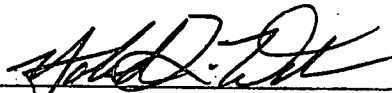
WE HEREBY RESCIND/CANCEL THE LOAN TRANSACTION RELATING TO SPECIALIZED LOAN SERVICING, LLC's ACCOUNT NUMBER 1002871432. A signed photocopy, PDF, or facsimile of this Rescission/Cancellation shall have the same force and/or effect as a signed original.

Dated: 5/21/08



Aaron Walker

Dated: 5/21/08



Yolonda Walker

Law Offices of Deborah L. Raymond

380 Stevens Avenue, Suite 205

Solana Beach, CA 92075

Tel: 858-481-9559

Fax: 858-724-0747

LETTER OF DESIGNATION AND AUTHORIZATION

To Whom It May Concern:

Re: Aaron Walker and Yolonda Walker / 7869 Bloomfield Road, San Diego, CA 92114

Please be advised that I have retained the Law Offices of Deborah L. Raymond to represent my interests. I hereby authorize the Law Offices of Deborah L. Raymond to represent my interests, including, but not limited to, communicating, negotiating, and otherwise dealing with my loans, previously or currently held by Secured Funding Corporation or Axis Mortgage & Investments, A Division of The Biltmore Bank of Arizona, and all parties associated with said loan, including without limitation, Chase Home Finance LLC, Lordsman Inc., Lordsman Inc. Escrow Division, Fidelity National Title, assigns, servicers, creditors, collectors, collection agencies, credit reporting agencies, attorneys, and all Federal, State, and local government agencies, as may be required in her representation of me. Except, this authorization does not authorize the Law Offices of Deborah L. Raymond to accept service of any summons and/or complaint on my behalf.

Also, by signing below, I authorize any credit reporting agencies, credit reporting bureaus, collector, creditor, servicers, doctor, chiropractor, hospital, any other healthcare provider, employer, police agency, government agency, or any other person to whom a signed photocopy or facsimile of this authorization is delivered, to furnish any information, documents, reports or copies of records which may be requested by the Law Offices of Deborah L. Raymond.

Date: 12/14/07

Signed: 

Date: 12/14/07

Signed: 



[Home](#) | [Help](#)

[Track & Confirm](#)

Track & Confirm

Search Results

Label/Receipt Number: 7007 1490 0003 2626 3125
Status: **Delivered**

Your item was delivered at 11:13 am on June 02, 2008 in LITTLETON, CO 80129. A proof of delivery record may be available through your local Post Office for a fee.

Additional information for this item is stored in files offline.

Track & Confirm

Enter Label/Receipt Number.

[Restore Offline Details >](#)



[Return to USPS.com Home >](#)

[Site Map](#)

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No FEAR Act EEO Data

FOIA



United States Postal Service



United States Postal Service

EXHIBIT "A-TRO"

Law Offices of Deborah L. Raymond

445 Marine View Avenue, Suite 305

Del Mar, CA 92014

Tel: 858-481-9559

Fax: 858-724-0747

June 27, 2008

SENT VIA FIRST CLASS CERTIFIED U.S. MAIL

Certified Receipt# 7008 0500 0001 9143 6615

Deutsche Bank National Trust Company
60 Wall Street Mail Stop NYC60-3012
New York, NY 10005-5391

7008 0500 0001 9143 6615

Re: Aaron & Yolonda Walker
SLS Account No. 1002871432
Chase Loan No. 0023780513
Property Address: 7869 Bloomfield Road, San Diego, California 92114
NOTICE OF RESCISSION OF MORTGAGE/LOAN HELD BY DEUTSCHE BANK
NATIONAL TRUST COMPANY, as TRUSTEE ON BEHALF OF THE HOLDERS OF
THE TERWIN MORTGAGE TRUST 2006-9HGA, ASSET-BACKED CERTIFICATES,
TMTS SERIES 2006-9HGA

Dear Sir or Madam:

This office represents Aaron Walker and Yolonda Walker in their claims against Deutsche Bank National Trust Company, as Trustee on behalf of the holders of the Terwin Mortgage Trust 2006-9HGA, Asset-Backed Certificates, TMTS Series 2006-9HGA, Specialized Loan Servicing, LLC, Chase Home Finance LLC, and their assigns, servicers, agents, principals, subsidiaries and/or the holder/owner of the note for the above referenced loan (hereinafter referred to as "Creditor"). Enclosed is a copy of a Letter of Designation And Authorization signed by my client. All further communications must be directed to this office only. The debt associated with the above referenced loan number(s) is hereby disputed.

NOTICE OF RESCISSION OF MORTGAGE

Consumers, Aaron Walker and Yolonda Walker (hereinafter referred to as "Consumers"), base the following upon the understanding that Creditor is subject to the Truth In Lending Act (hereinafter "TILA"), and hereby exercise their rights under the Truth In Lending Act (15 U.S.C. §1601 et seq.), Regulation Z (12 C.F.R. § 226.1 et seq.), and related statutes and California state laws, which may include, without limitation, RESPA and California Finance Lenders laws, to rescind the above referenced loan. Without limitation, Consumers base their right to rescind upon the fact that required disclosures pursuant to 15 USC §1601 et seq. were not provided to Consumers, including but not limited to, two copies of a Notice of Right To Cancel containing all

Page 1 of 3

required information.

We are prepared to discuss a tender obligation, should it arise, and satisfactory ways in which my clients may meet this obligation. Please be advised that if you do not cancel the security interest and return all consideration paid by my clients within 20 days of receipt of this letter, you could be responsible for actual and statutory damages pursuant to 15 U.S.C. § 1640(a).

Demand is hereby made for verification of the alleged debt. Request is also made for an immediate written description of all information, data, or other documentation that you believe would disprove that this loan is in violation of TILA, RESPA, and/or California Finance Lenders laws and subject to rescission.

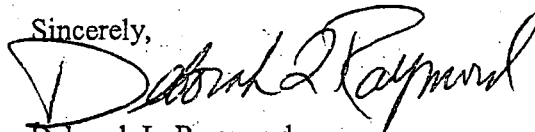
Demand is further made for all signed and/or unsigned copies of the following documents relating to the above referenced loan:

1. Notice of Right to Cancel;
2. HUD-1 Disclosure;
3. Truth In Lending Act Disclosures;
4. The Entire Note;
5. Deed of Trust;
6. All riders to any of the above documents;
7. Any documents relating to any transfer, sale, or assignment of the note or loan, including but not limited to any pooling and servicing agreement ("PSA");
8. A full accounting of the loan transaction, including but not limited to a complete history of all credits, debits, charges, loan disbursements, loan charges, payments made, and current principal balance due;
9. The Entire Loan Application File; and
10. All correspondence.

If you are not currently the holder/owner of the loan, we hereby request that you immediately forward this Notice of Rescission to the holder/owner of the loan or immediately provide this office with the name, address, and telephone number of the current holder/owner of the loan.

Be advised that any action taken against my clients, including but not limited to any collection actions, any recording of any foreclosure instrument, including any Notice of Trustee's Sale, or any other foreclosure action which violates federal and/or state laws will be construed as willful and malicious actions, and will be extremely injurious to my clients.

Sincerely,



Deborah L. Raymond

Attorney for Aaron & Yolonda Walker

cc: S.L.S., 8742 Leucant Blvd., #300, Highland Ranch, CO 80129 (1st Class U.S. Mail Only)

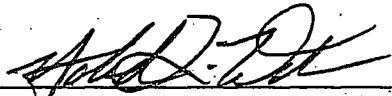
WE HEREBY RESCIND/CANCEL THE LOAN TRANSACTION RELATING TO
SPECIALIZED LOAN SERVICING, LLC's ACCOUNT NUMBER 1002871432. A signed
photocopy, PDF, or facsimile of this Rescission/Cancellation shall have the same force and/or
effect as a signed original.

Dated: 5/21/08



Aaron Walker

Dated: 5/21/08



Yolonda Walker

Law Offices of Deborah L. Raymond

380 Stevens Avenue, Suite 205

Solana Beach, CA 92075

Tel: 858-481-9559

Fax: 858-724-0747

LETTER OF DESIGNATION AND AUTHORIZATION

To Whom It May Concern:

Re: Aaron Walker and Yolonda Walker / 7869 Bloomfield Road. San Diego. CA 92114

Please be advised that I have retained the Law Offices of Deborah L. Raymond to represent my interests. I hereby authorize the Law Offices of Deborah L. Raymond to represent my interests, including, but not limited to, communicating, negotiating, and otherwise dealing with my loans, previously or currently held by Secured Funding Corporation or Axis Mortgage & Investments, A Division of The Biltmore Bank of Arizona, and all parties associated with said loan, including without limitation, Chase Home Finance LLC, Lordsman Inc., Lordsman Inc. Escrow Division, Fidelity National Title, assigns, servicers, creditors, collectors, collection agencies, credit reporting agencies, attorneys, and all Federal, State, and local government agencies, as may be required in her representation of me. Except, this authorization does not authorize the Law Offices of Deborah L. Raymond to accept service of any summons and/or complaint on my behalf.

Also, by signing below, I authorize any credit reporting agencies, credit reporting bureaus, collector, creditor, servicers, doctor, chiropractor, hospital, any other healthcare provider, employer, police agency, government agency, or any other person to whom a signed photocopy or facsimile of this authorization is delivered, to furnish any information, documents, reports or copies of records which may be requested by the Law Offices of Deborah L. Raymond.

Date: 12/14/07Signed: Date: 12/14/07Signed: 



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EXHIBIT "B-TRO"

Law Offices of Deborah L. Raymond

445 Marine View Avenue, Suite 305

Del Mar, CA 92014

Tel: 858-481-9559

Fax: 858-724-0747

July 31, 2008

SENT VIA FIRST CLASS CERTIFIED U.S. MAIL

Certified Receipt# 7008 0500 0002 1709 8797

7008 0500 0002 1709 8797

AXIS MORTGAGE & INVESTMENT,
A DIVISION OF THE BILTMORE BANK OF ARIZONA
1201 S. ALMA SCHOOL RD., SUITE 3700
MESA, ARIZONA 85210

Re: Aaron & Yolonda Walker
Original Loan No. 2301597312
SLS Account No. 1002871432
Chase Loan No. 0023780513
Property Address: 7869 Bloomfield Road, San Diego, California 92114
NOTICE OF RESCISSION OF MORTGAGE/LOAN PREVIOUSLY HELD BY AXIS
MORTGAGE & INVESTMENTS and CURRENTLY HELD BY DEUTSCHE BANK
NATIONAL TRUST COMPANY, as TRUSTEE ON BEHALF OF THE HOLDERS OF
THE TERWIN MORTGAGE TRUST 2006-9HGA, ASSET-BACKED CERTIFICATES,
TMTS SERIES 2006-9HGA

Dear Sir or Madam:

This office represents Aaron Walker and Yolonda Walker in their claims relating to the above referenced loan transaction. Enclosed is a copy of a Letter of Designation And Authorization signed by my client. All further communications must be directed to this office only. The debt associated with the above referenced loan number(s) is hereby disputed.

NOTICE OF RESCISSION OF MORTGAGE

Consumers, Aaron Walker and Yolonda Walker (hereinafter referred to as "Consumers"), base the following upon the understanding that Creditor is subject to the Truth In Lending Act (hereinafter "TILA"), and hereby exercise their rights under the Truth In Lending Act (15 U.S.C. §1601 et seq.), Regulation Z (12 C.F.R. § 226.1 et seq.), and related statutes and California state laws, which may include, without limitation, RESPA and California Finance Lenders laws, to rescind the above referenced loan. Without limitation, Consumers base their right to rescind upon the fact that required disclosures pursuant to 15 USC §1601 et seq. were not provided to Consumers, including but not limited to, four copies of a Notice of Right To Cancel containing all required information.


Page 1 of 3

Demand is made for all signed and/or unsigned copies of the following documents relating to the above referenced loan transaction:

1. Notices of Right to Cancel;
2. HUD-1 Disclosure;
3. Truth In Lending Act Disclosures;
4. The Entire Note;
5. Deed of Trust;
6. All riders to any of the above documents;
7. Any documents relating to any transfer, sale, or assignment of the note or loan, including but not limited to any pooling and servicing agreement ("PSA");
8. A full accounting of the loan transaction, including but not limited to a complete history of all credits, debits, charges, loan disbursements, loan charges, payments made, and current principal balance due;
9. The Entire Loan Application File; and
10. All correspondence.

Your prompt attention to this matter is requested.


Sincerely,

A handwritten signature in black ink, appearing to read "Deborah L. Raymond". The signature is fluid and cursive, with the first name "Deborah" being more prominent than the last name "Raymond".

Deborah L. Raymond
Attorney for Aaron & Yolonda Walker

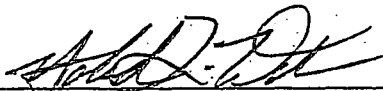
WE HEREBY RESCIND/CANCEL THE LOAN TRANSACTION RELATING TO
SPECIALIZED LOAN SERVICING, LLC's ACCOUNT NUMBER 1002871432. A signed
photocopy, PDF, or facsimile of this Rescission/Cancellation shall have the same force and/or
effect as a signed original.

Dated: 5/21/08



Aaron Walker

Dated: 5/21/08



Yolonda Walker

Law Offices of Deborah L. Raymond

380 Stevens Avenue, Suite 205

Solana Beach, CA 92075

Tel: 858-481-9559

Fax: 858-724-0747

LETTER OF DESIGNATION AND AUTHORIZATION

To Whom It May Concern:

Re: Aaron Walker and Yolonda Walker / 7869 Bloomfield Road. San Diego. CA 92114

Please be advised that I have retained the Law Offices of Deborah L. Raymond to represent my interests. I hereby authorize the Law Offices of Deborah L. Raymond to represent my interests, including, but not limited to, communicating, negotiating, and otherwise dealing with my loans, previously or currently held by Secured Funding Corporation or Axis Mortgage & Investments, A Division of The Biltmore Bank of Arizona, and all parties associated with said loan, including without limitation, Chase Home Finance LLC, Lordsman Inc., Lordsman Inc. Escrow Division, Fidelity National Title, assigns, servicers, creditors, collectors, collection agencies, credit reporting agencies, attorneys, and all Federal, State, and local government agencies, as may be required in her representation of me. Except, this authorization does not authorize the Law Offices of Deborah L. Raymond to accept service of any summons and/or complaint on my behalf.

Also, by signing below, I authorize any credit reporting agencies, credit reporting bureaus, collector, creditor, servicers, doctor, chiropractor, hospital, any other healthcare provider, employer, police agency, government agency, or any other person to whom a signed photocopy or facsimile of this authorization is delivered, to furnish any information, documents, reports or copies of records which may be requested by the Law Offices of Deborah L. Raymond.

Date: 12/14/07

Signed: 

Date: 12/14/07

Signed: 



Chase Home Finance LLC
194 Wood Avenue South
Iselin, New Jersey 08830-2710

July 21, 2008

Ms. Deborah L. Raymond, Attorney
445 Marine View Avenue, Suite 305
Del Mar CA 92014

Re: Loan #*****0513
Borrower: Aaron Walker

Dear Ms. Raymond:

I am writing in response to your June 27, 2008 correspondence which was forwarded on your behalf by Deutsche Bank, and received by me in the Executive Resolution Group of Chase Home Finance on July 21, 2008, about your notice to rescind this mortgage.

This letter will confirm the telephone message that I left for you today. In order to address the issues that you raised, additional time is required while we review your client's loan file. Every effort will be made to provide you with a complete and accurate response in a timely manner.

If you have any questions, please call me at (732) 452-8329, Monday through Friday from 8:00 a.m. to 4:30 p.m., Eastern Time.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Hesse", written over a horizontal line.

Rosemary Hesse
Mortgage Officer
Executive Resolution Group

cc: Ms. Suzanne C. Patten, Deutsche Bank

Not Reported in F.Supp.2d, 2008 WL 1378231 (C.D.Cal.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
C.D. California.

Sarah AVILA and Tim Avila, Plaintiffs,

v.

STEARNS LENDING, INC.; Indymac Bancorp, Inc.; and Does 1 through 200, inclusive, Defendants.

No. CV 08-0419-AG(CTx).

April 7, 2008.

Eric M. George, Michael A. Bowse, Dreier Stein Kahan Browne Woods George LLP, Beverly Hills, CA,
for Plaintiffs.

Chad Weaver, Edgerton & Weaver, Hermosa Beach, CA, Naomi A. Carry, Dykema Gossett, Los
Angeles, CA, for Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

ANDREW J. GUILFORD, District Judge.

*1 Before the Court is the application of Plaintiffs Sarah and Tim Avila ("Plaintiffs") for a preliminary injunction preventing the foreclosure sale of their home until this action is resolved ("Application"). After considering the moving, opposing, and reply papers, and oral argument by the parties, the Court GRANTS the Motion.

BACKGROUND

Plaintiffs purchased their home in Oakdale, California in December 2004 with a thirty-year, fixed-rate mortgage. (Application 6:17-18.) In January 2006, Plaintiffs refinanced their home loan by buying an Option Adjustable Rate Mortgage ("Option ARM") from Defendant Stearns Lending, Inc.

According to the loan documents, Plaintiffs were to "initially pay interest at a yearly rate of 1.000%." (Application, Exhibit A.) The documents state that the "initial monthly payments" would be "in the amount of U.S. \$1,426.47." (*Id.*) The loan documents also provide that the initial rate "may change" on the first day of the second month of the loan. (*Id.*) According to the formula for the change of the interest rate, it appears certain that the interest rate would change on the first day of the second month of the loan. (*Id.*)

Plaintiffs allege that the loan they received was "dramatically different from the one they thought they were agreeing to." (Application 8:4-5.) They allege that the disclosures made with the loan were not clear, conspicuous, or easily understandable, as required by the Truth in Lending Act ("TILA"). (*Id.* at 7:27-8:1.) Accordingly, Plaintiffs assert a right to rescind their loan.

Plaintiff's loan has been assigned to Defendant IndyMac Bank, F.S.B. (Application 7:23.) In January of this year, Plaintiffs received a Notice of Trustee's Sale, indicating that their house would be foreclosed upon on January 29, 2008. The Court issued a Temporary Restraining Order to stop the January foreclosure. The parties now argue whether a Preliminary Injunction should issue.

ANALYSIS

1. PRELIMINARY INJUNCTION

A preliminary injunction is a drastic and extraordinary remedy that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. See Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S.Ct. 1865, 138 L.Ed.2d 162 (1997). A plaintiff may meet this burden by "demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in his favor." Dollar Rent A Car, Inc. v. Travelers Indem. Co., 774 F.2d 1371, 1374-75 (9th Cir.1985); Prudential Real Estate Affiliates, Inc. v. PRR Realty, Inc., 204 F.3d 867, 874 (9th Cir.2000).

"These are not separate tests, but outer reaches of a single continuum." Dollar Rent A Car, 774 F.2d at 1374-75 (quoting Benda v. Grand Lodge of the Int'l Ass'n of Machinists & Aerospace Workers, 584 F.2d 308, 315 (9th Cir.1978) (internal quotation marks omitted)). However, in any situation, the court must find that there is at least a fair chance of success on the merits, see Johnson v. California State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir.1995), and that there is some threat of an immediate irreparable injury. See Big Country Foods, Inc. v. Board of Ed. Of the Anchorage Sch. Dist., 868 F.2d 1085, 1088 (9th Cir.1989).

1.1 Likelihood of Success on the Merits

*2 Plaintiffs argue that their likelihood of success on the merits is great, because Defendants' disclosures failed to comply with "several key disclosure requirements" of TILA. (Application 8:12-13.) Plaintiff lists Defendants' violations as: (1) their failure to disclose the interest rate actually applicable to Plaintiffs' loan in a clear, easily understandable manner (19 C.F.R. § 226.17); (2) their failure to disclose that the payment cap associated with the Option ARM loan sold to Plaintiffs would certainly cause negative amortization to occur (12 C.F.R. § 226.19); and (3) their failure to disclose that the initial 1% interest rate was actually a discounted rate which was certain to increase immediately after the loan began (12 C.F.R. § 226.19). (Application 8:15-22.) Defendants do not respond to any of these arguments.

Defendants argue, instead, that Plaintiffs have failed to establish a likelihood of success on the merits because they have made "no showing that rescission will ever be possible." (Opposition 2:10-11.) Under 15 U.S.C. § 1635(b), upon rescission, a creditor must return to a borrower any money or property given it by the borrower, and the borrower must return any property, or its reasonable value, to the creditor. Defendants argue that Plaintiffs are not entitled to rescission unless they can show that they are able to tender the proceeds of the loan to the lender. Because Plaintiffs have not made a showing that they will be able to tender the loan proceeds in a rescission, Defendants reason, Plaintiffs have not shown a likelihood of success on the merits.

To support this argument, Defendants cite Yamamoto v. Bank of New York, 329 F.3d 1167 (9th Cir.2003). In that case, a district court granted a motion for summary judgment against a couple seeking rescission of the loan on their home. The court found that, upon rescission, the couple would be unable to tender the proceeds of the loan to the lender. On appeal, the Ninth Circuit found that it was within the district court's discretion to grant the motion for summary judgment. The Ninth Circuit recognized that "a trial judge ha[s] the discretion to condition rescission on tender by the borrower of the property he had received from the lender." *Id.* at 1171 (quoting Ljepava v. M.S.S.C. Properties, Inc., 511 F.2d 935, 944 (9th Cir.1975)). In deciding whether to condition rescission, a district judge should look to the "equities present in a particular case, as well as consideration of the legislative policy of full disclosure that underlies the Truth in Lending Act and the remedial-penal nature of the private enforcement provisions of the Act." Palmer v. Wilson, 502 F.2d 860, 862 (9th Cir.1974). For instance, where the TILA violations alleged are not serious, conditioning rescission may be appropriate. See Yamamoto, 329 F.3d at 1171.

Yamamoto does not support Defendants' argument that Plaintiffs cannot show a likelihood of success on the merits without demonstrating their ability to tender the proceeds of the loan. Instead, Yamamoto emphasizes a district court's "equitable discretion to modify rescission procedures." *Id.* at 1173. This discretion can be exercised in favor of lenders, by requiring borrowers to make a showing of their ability to pay a lump sum, or in favor of borrowers, by allowing them to fulfill their tender

obligation by making payments over time. *In re Stuart*, 367 B.R. 541, 552 (Bankr.E.D.Pa.2007); see *Shepard v. Quality Sliding & Window Factory, Inc.*, 730 F.Supp. 1295 (D.Del.1990) (allowing borrower to satisfy tender obligation by making monthly payments at the rate she had understood would be applicable); *Mayfield v. Vanguard Sav. & Loan Ass'n*, 710 F.Supp. 143, 149 (E.D.Pa.1989) (allowing borrower to satisfy tender obligation by making monthly payment equal to those she made before the loan transaction). Given the circumstances of this case, and the seriousness of the TILA violations alleged, this Court is not inclined to exercise its discretion in favor of Defendants at this time. The Court also finds that Defendants' argument might raise anti-deficiency issues. Thus, Plaintiffs do not need to demonstrate their ability to pay a lump sum upon rescission in order to demonstrate a likelihood of success on the merits. For the reasons stated in Plaintiff's Application, and unopposed in Defendants' Opposition, the Court finds that Plaintiffs have shown probable success on the merits.

1.2 Balance of Hardships

*3 Plaintiffs also argue that the balance of hardships tips sharply in their favor, because they and their three children risk losing their home. Plaintiffs cite many cases for the proposition that "[l]osing one's home through foreclosure is an irreparable injury." See, e.g., *Wrobel v. S.L. Pope & Associates*, 2007 WL 2345036, at * 1 (S.D.Cal. June 15, 2007). Plaintiffs also point out that they will lose their right to rescission under 15 U.S.C. § 1635(f) if their home is foreclosed upon.

The Court agrees. "The imminent foreclosure of Plaintiff's residence presents a threat of irreparable harm." *Nichols v. Deutsche Bank Nat. Trust Co.*, 2007 WL 4181111, at *3 (S.D.Cal. Nov.21, 2007). Plaintiffs have shown the possibility of irreparable injury if the preliminary injunction does not issue.

1.3 Conclusion

Accordingly, the Application is GRANTED.

2. DEFENDANTS' REQUEST FOR THE POSTING OF A BOND AND MONTHLY PAYMENTS

Defendants request that, if the Court orders a preliminary injunction, it should also order payment of a bond and payment of at least some portion of the monthly mortgage installments. This request is DENIED. "The likelihood of success on the merits, as found by the district court, tips in favor of a minimal bond or no bond at all." *Van De Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1326 (9th Cir.1985). Defendants have failed to dispute Plaintiffs strong showing of their likelihood of success on the merits. Accordingly, and for the reasons stated in Plaintiff's Reply, the Court finds that no bond or monthly payments are warranted.

DISPOSITION

Plaintiffs' Motion is GRANTED.

IT IS SO ORDERED.

C.D.Cal., 2008.

Avila v. Stearns Lending, Inc.

Not Reported in F.Supp.2d, 2008 WL 1378231 (C.D.Cal.)

Motions, Pleadings and Filings ([Back to top](#))

• [2:08cv00419](#) (Docket) (Jan. 23, 2008)

END OF DOCUMENT

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Slip Copy, 2007 WL 2345036 (S.D.Cal.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
S.D. California.

Andrew K. WROBEL, Plaintiff,
v.

S.L. POPE & ASSOCIATES; Hammond/Trossen Enterprises, L.L.P., et al., Defendants.

No. 07CV1591 IEG (BLM).

Aug. 15, 2007.

Deborah L. Raymond, Law Offices of Deborah L. Raymond, Solana Beach, CA, for Plaintiff.

TEMPORARY RESTRAINING ORDER

IRMA E. GONZALEZ, Chief Judge.

*1 Presently before the Court is Andrew K. Wrobel's ("plaintiff") application for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b). Plaintiff served its application on defendants through their counsel, James Jay Stoffel. However, Mr. Stoffel represents only S.L. Pope & Associates and Sam L. Pope, and has filed an opposition to plaintiff's application on behalf of these defendants. At oral argument, Mr. R. Keith McKellogg appeared for the first time on behalf of the remaining defendants.

The Ninth Circuit has prescribed the following equitable criteria for determining whether to grant injunctive relief:

(1) the likelihood of the moving party's success on the merits; (2) the possibility of irreparable injury to the moving party if relief is not granted; (3) the extent to which the balance of hardships favors the respective parties; and (4) in certain cases, whether the public interest will be advanced by granting the preliminary relief. The moving party must show either (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) the existence of serious questions going to the merits, the balance of hardships tipping sharply in its favor, and at least a fair chance of success on the merits.... [T]he required degree of irreparable harm increases as the probability of success decreases.

Owner Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co., 367 F.3d 1108, 1111 (9th Cir.2004) (quoting Miller ex rel. N.L.R.B. v. Cal. Pac. Med. Ctr., 19 F.3d 449, 456 (9th Cir.1994)). The standard for granting a temporary restraining order is the same as the standard for entering a preliminary injunction. Bronco Wine Co. v. U.S. Dep't of Treasury, 997 F.Supp. 1309, 1313 (E.D.Cal.1996); Franklin v. Scribner, Civil No. 07-0438 BTM (LSP), 2007 WL 1491100, at *3 (S.D.Cal. May 21, 2007). The temporary restraining order "should be restricted to serving [its] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 439, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974); accord L.A. Mem'l Coliseum Comm'n v. Nat'l Football League, 634 F.2d 1197, 1200 (9th Cir.1980); Del Toro-Chacon v. Chertoff, 431 F.Supp.2d 1135, 1139-40 (W.D.Wash.2006).

On the basis of plaintiff's application and supporting documentation, plaintiff will suffer irreparable injury if the Court does not grant the temporary restraining order. Defendants are scheduled to foreclose on plaintiff's property, including his residence of more than twenty years, on Thursday,

August 16, 2007. Losing one's home through foreclosure is an irreparable injury.^{FN1} See *Cronkhite v. Kemp*, 741 F.Supp. 822, 825 (E.D.Wash.1989) (irreparable injury established where deed of trust contained no redemption period, and foreclosure would result in plaintiff losing home and all equity).

FN1. The Court is aware of other cases where district courts denied injunctive relief, though the applicant alleged that foreclosure on the applicant's property was an irreparable injury. In one particular case, the Western District of Washington denied the temporary restraining order because the applicant could halt the foreclosure by paying the amount due on the loan. *Barrett v. Popular Inc.*, No. C07-0637RSL, 2007 WL 1753539, at *1 (W.D.Wash. June 18, 2007). If the applicant were to prevail on the merits, the applicant could recover the excessive amounts paid as monetary damages. *Id.* (citing *Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991) (economic injury, by itself, is insufficient to find irreparable harm)). While the showing of irreparable injury is sufficient to warrant a ten-day temporary restraining order, the Court will order parties to brief further the issue of whether foreclosure would be an "irreparable injury" in this case before the Court enters a preliminary injunction.

*2 The remaining equitable factors likewise support the Court's entry of a temporary restraining order. The balance of hardships tips sharply in plaintiff's favor. For plaintiff to lose his house tomorrow would present a far greater hardship than postponing the foreclosure sale for a ten-day period to allow for an additional hearing and further briefing (especially since the defendants represented by Mr. McKellogg have not had an opportunity to oppose plaintiff's application in writing).

Because the balance of hardships so clearly points in plaintiff's direction, plaintiff is allowed to make a lesser showing on the merits. See *Johnson v. Cal. State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir.1995) (where balance of hardships tips sharply in plaintiff's favor, plaintiff need only show "fair chance of success on the merits"). Here, plaintiff has shown at least a "fair chance of success." Plaintiff's signature of the Forbearance and Release Agreement did not waive plaintiff's right to rescind the loan because of violations of the Truth-in-Lending Act (TILA), for the waiver provisions in that agreement did not comply with all the requirements of Regulation Z. See 12 C.F.R. § 226.15 (e) (requiring dated written statement that describes the consumer's "bona fide personal financial emergency," specifically waives the right to rescind, and contains the consumer's signature).

Furthermore, plaintiff has a "fair chance of success" of establishing TILA violations because defendant creditors failed to provide plaintiff with certain "material disclosures" and required documents, including two notices of plaintiff's right to rescind the loan. See 15 U.S.C. §§ 1602(u) (defining material disclosures), 1639(a)(2) (listing further material disclosures); 12 C.F.R. § 226.32 (c) (same); see also 15 U.S.C. § 1635(a) (requiring creditors to give consumer two copies of the notice of the right to rescind); 12 C.F.R. § 226.23(b)(1) (same). The failure to make material disclosures and tender required documents entitles plaintiff to rescind within three years of the loan's consummation. 15 U.S.C. § 1635(f); 12 C.F.R. §§ 226.15(a)(3), 226.23(a)(3).

For the time being, the Court finds that plaintiff's allegations on the merits are sufficient to grant the temporary restraining order. Nonetheless, before entering any preliminary injunction, the Court will request further briefing on the issue of what showing plaintiff must make (if any) of his ability to tender back the loan proceeds, in the event plaintiff proves he is entitled to rescission. See 12 C.F.R. § 226.23(d)(3) (requiring, as part of rescission, the consumer to tender back any money or property the creditor previously delivered to the consumer); *Yamamoto v. Bank of New York*, 329 F.3d 1167, 1169, 1173 (9th Cir.2003); *LaGrone v. Johnson*, 534 F.2d 1360, 1362 (9th Cir.1976); *Palmer v. Wilson*, 502 F.2d 860, 862 (9th Cir.1974).

Public interest factors do not weigh in favor or against injunctive relief in this case.

*3 Pursuant to Federal Rule of Civil Procedure 65(c), the Court finds that plaintiff does not have to give any security at this time to postpone the foreclosure sale for the ten-day duration of this temporary restraining order. At this time, the Court finds sufficient equity in the property.

The Court hereby **ORDERS:**

(1) All defendants and their agents, assigns, employees, officers, attorneys, and representatives are enjoined and restrained from engaging in or performing any act to deprive plaintiff of ownership or possession of the real property located at 2241 Calle Tiara, La Jolla, California 92037 ("Property"), including but not limited to instituting, prosecuting or maintaining foreclosure or sale proceedings on the Property, from recording any deeds or mortgages regarding the Property or from otherwise taking any steps whatsoever to deprive plaintiff of ownership in the Property, and in particular from proceeding with the sale of the Property scheduled for August 16, 2007.

(2) This temporary restraining order shall be binding upon the parties to this action and all other persons or entities who receive actual notice of this order by personal service or other acceptable means of service.

(3) With respect to all defendants except S.L. Pope & Associates and Sam L. Pope, plaintiff shall forthwith serve defendants with a copy of this Order, together with all other documentation filed with the Court in this action.

(4) This temporary restraining order is entered this 15th day of August at 3:00 p.m.

(5) A hearing on plaintiff's motion for preliminary injunction is set for **August 28th, 2007 at 10:00 a.m.** in Courtroom 1.

(6) By **Tuesday, August 21, 2007**, plaintiff shall submit a supplemental brief in support of a preliminary injunction, including but not limited to the following issues:

(a) Case law establishing whether foreclosure of plaintiff's property would amount to an "irreparable injury";

(b) Whether the release and waiver in the Forbearance and Release Agreement of December 21, 2006 bars plaintiff from exercising the right of rescission;

(c) The impact of the Ninth Circuit opinion in *Yamamoto v. Bank of New York* (and cases cited therein) on whether plaintiff can establish a "likelihood of success on the merits";

(d) The appropriate remedy and time period for allowing plaintiff to demonstrate his ability to tender the loan proceeds, pursuant to 12 C.F.R. § 226.23(d)(3); and

(e) the proper form and amount of any security plaintiff should give, pursuant to Rule 65(c).

This brief **SHALL NOT EXCEED** twenty-five (25) pages.



(7) By **Friday, August 24, 2007**, defendants shall submit supplemental brief(s) ^{FN2} in opposition to a preliminary injunction, including but not limited to the issues enumerated in ¶ 6 *supra*. Any supplemental brief **SHALL NOT EXCEED** twenty-five (25) pages.

^{FN2}. Messrs. Stoffel and McKellogg may jointly submit one brief on behalf of all defendants, or two separate briefs on behalf of their respective clients.

IT IS SO ORDERED.

S.D.Cal., 2007.
Wrobel v. S.L. Pope & Associates
Slip Copy, 2007 WL 2345036 (S.D.Cal.)

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- [2008 WL 533479](#) (Trial Pleading) First Amended Counterclaim of S.I. Pope and Associates; Sammy L. Pope; Hammond/trossen Enterprises, Lll.p, An Entity of Unknown Form; Helen M. Hammond, Co-trustee of the Hammond Trust Dated 6/6/87; Dean Trossen, An Individual; Anastasia Stacy Trossen, An Individual R. Kendal Jones, a Trustee of the Jones Family Trust Dated April 14, 1987; and Suzanne Lambert, As Trustee of the Suzanne Lambert Pope Trust Dated 6/13/01 (Jan. 8, 2008)  [Original Image of this Document \(PDF\)](#)
 - [2007 WL 4959705](#) (Trial Pleading) First Amended Complaint for Injunctive Relief, Recoupment/Setoff, Damages, Accounting, and to Quiet Title Relating to Violations of the Truth In Lending Act; the Home Ownership and Equity Protection Act; and the Rosenthal Act; and Jury Demand (Dec. 3, 2007)  [Original Image of this Document with Appendix \(PDF\)](#)
 - [2007 WL 2959380](#) (Trial Pleading) Complaint for Injunctive Relief, Damages, Accounting, and to Quiet Title Relating to Violations of the Truth in Lending Act; the Home Ownership and Equity Protection Act; and the Rosenthal Act; and Jury Demand (Aug. 10, 2007)
 - [3:07cv01591](#) (Docket) (Aug. 10, 2007)
- END OF DOCUMENT

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Slip Copy, 2007 WL 4181111 (S.D.Cal.)

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
S.D. California.
Cody NICHOLS, Plaintiff,
v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee for Morgan Stanley Loan Trust 2006-HE4,
et al., Defendants.
Civil No. 07cv2039-L(NLS).
Nov. 21, 2007.

Deborah L. Raymond, Law Offices of Deborah L. Raymond, Solana Beach, CA, for Plaintiff.

Gregory S. Korman, Katten Muchin Rosenman, Los Angeles, CA, for Defendants.

**TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY
INJUNCTION**

M. JAMES LORENZ, District Judge.

*1 Plaintiff Cody Nichols, owner of his principal residence located at 2010 Rancho Manzanita in Boulevard, California ("Property"), refinanced the mortgage on the Property. Subsequently, he filed a complaint pursuant to the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601 *et seq.* to enforce his right to rescind a consumer credit transaction, void Defendants' security interest in the Property and avoid foreclosure. Pursuant to 28 U.S.C. § 1331, the court has subject matter jurisdiction over the case, because the action arises under TILA, a federal statute.

On October 16, 2007, Plaintiff sent Defendants a Notice of Rescission of Mortgage, requesting, among other things, that the foreclosure be postponed or cancelled. On November 19, 2007, Plaintiff filed an application for a temporary restraining order ("TRO") and preliminary injunction, seeking to enjoin the foreclosure sale, currently scheduled for November 26, 2007. Defendants were served with Plaintiff's moving papers on November 2 and 5, 2007, respectively, at least two weeks before Plaintiff filed them with the court, however, they have not responded. Because it is unopposed (see Civ. L. Rule 7. 1(f)(3)(c)) and for the reasons which follow, Plaintiff's TRO application is **GRANTED**.

In February 2006, Plaintiff refinanced the Property by entering into a promissory note with Defendant Decision One Mortgage Company, LLC ("Decision One"), secured by a first deed of trust on the Property. The proceeds were used to pay off the existing mortgage held by a third party lender. Subsequently, Decision One sold the mortgage to Defendant Deutsche Bank National Trust.

Plaintiff was not provided with copies of the loan documents when he signed them. On February 24, 2006, a Friday, at approximately 8 p.m., lender's notary came to Plaintiff's home with the loan papers for Plaintiff to sign. Plaintiff was rushed by the lender's notary and did not have an opportunity to read the documents. Plaintiff was not left with a copy of the documents, but was told they would arrive by mail at a later date. However, the documents did not arrive. Plaintiff's mother, who also resides at the Property, subsequently called the lender and requested a copy of the documents. A package was sent on May 16, 2006, which contained certain unsigned documents, including a Notice of Right to Cancel, stating Plaintiff had until February 28, 2006 to cancel the loan. Plaintiff therefore believed the time to cancel had expired. When Plaintiff defaulted on the loan, a foreclosure date was set.

Plaintiff argues that because Defendants did not make all the material disclosures required by TILA, his right to cancel the loan was extended to three years. On October 16, 2007, Plaintiff's counsel sent a Notice of Rescission of Mortgage to Defendants and requested that the foreclosure be postponed or cancelled. Defendants did not directly respond to the notice, but advanced the foreclosure date from November 2 to October 30, 2007. Due to the county-wide wildfire emergency the week of October 22, 2007, the sale was postponed until Monday, November 26, 2007. Plaintiff argues that his notice of rescission was timely, it voids Defendants' security interest in the Property, and is therefore sufficient to avoid foreclosure.

*2 Preliminary injunctive relief, including a TRO, "is not a preliminary adjudication on the merits, but a device for preserving the *status quo* and preventing the irreparable loss of rights before judgment." Textile Unlimited, Inc. v. A.B.M.H. and Co., Inc., 240 F.3d 781, 786 (9th Cir.2001). "The *status quo ante litem* refers not simply to any situation before the filing of a lawsuit, but instead to the last uncontested status which preceded the pending controversy." GoTo.com, Inc. v. The Walt Disney Co., 202 F.3d 1199, 1210 (9th Cir.2000). A party seeking preliminary injunctive relief, including a temporary restraining order, under Rule 65 must show either (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) that serious questions going to the merits are raised and the balance of hardships tips sharply in the moving party's favor. Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1119 (9th Cir.1999). "These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir.1998).

"TILA and Reg Z contain detailed disclosure requirements for consumer loans. A lender's violation of TILA allows the borrower to rescind a consumer loan secured by the borrower's primary dwelling. Technical or minor violations of TILA or Reg Z, as well as major violations, impose liability on the creditor and entitle the borrower to rescind." Semar v. Platte Valley Fed. Sav. & Loan Ass'n., 791 F.2d 699, 703-04 (9th Cir.1986) citing 15 U.S.C. § 1635(a). "TILA required that the documents state specifically the last date on which the [borrower] could rescind the loan agreement without penalty. TILA's 'buyer's remorse' provision allows borrowers three business days to rescind, without penalty, a consumer loan that uses their principal dwelling as security. TILA and its regulations, issued by the Federal Reserve System, 12 C.F.R. §§ 226.1-29 ('Reg Z'), require the lender to provide a form stating the specific date on which the three-day rescission period expires. If the lending institution omits the expiration date and fails to cure the omission by subsequently providing the information, the borrower may rescind the loan within three years after it was consummated." Id. at 701-02, citing 15 U.S.C. § 1635(a) & (f); 12 C.F.R. § 226.23(b)(5). If the borrower timely exercises his or her right to rescind, "the security interest giving rise to the right of rescission becomes void" 12 C.F.R. § 226.23(d).

Because Plaintiff was not provided with notice of the last date on which he could rescind the transaction until after the period had expired, it appears Defendants did not provide him with material disclosures as required by 15 U.S.C. § 1635(a) and Reg Z. It is therefore very likely Plaintiff could prevail on the argument he was entitled to rescind the loan within three years of February 24, 2006. Because Plaintiff's rescission letter was sent within this time period, it is very likely that the lender's security interest in the Property is void. The lender cannot foreclose on the Property without a security interest. The court finds Plaintiff has shown a strong probability of success on the merits.

*3 The court next considers whether Plaintiff has also made the requisite showing of possibility of imminent irreparable harm. See Sun Microsystems, 188 F.3d at 1119. Plaintiff maintains that a loss of his home to foreclosure would constitute irreparable harm not only because his home is unique to him but also because his father, who is severely ill, resides at the Property and likely would be severely impacted if he had to leave. The court finds that the imminent foreclosure of Plaintiff's residence presents a threat of irreparable harm. See Sundance Land Corp. v. Comty First Fed. Sav. & Loan Ass'n, 840 F.2d 653, 661 (9th Cir.1988) (foreclosure of real property irreparable harm). ^{FN1} On balance, the court also finds that the harm likely to result to Plaintiff from foreclosure substantially outweighs any financial harm to Defendants if the restraining order is improperly granted.

FN1. In addition, the court notes that Plaintiff's right to rescind expires upon the sale of the property. 12 C.F.R. § 226.23(a)(3). If the foreclosure is allowed to proceed, he will lose his right to rescind the loan transaction.

For the foregoing reasons, Plaintiff's application for a temporary restraining order is **GRANTED** pending a hearing on his motion for a preliminary injunction.

Accordingly, **IT IS HEREBY ORDERED** that Defendants Deutsche Bank National Trust Company, as Trustee for Morgan Stanley Loan Trust 2006-HE4, and Decision One Mortgage Company, LLC and their servicers, agents, assigns, employees, officers, attorneys, and representatives are **HEREBY RESTRAINED AND ENJOINED** from engaging in or performing any act to deprive Plaintiff of ownership and/or possession of the real property located at 2010 Rancho Manzanita, Boulevard, California 91905 ("Property"), including but not limited to instituting, prosecuting, or maintaining foreclosure or sale proceedings on the Property, from recording any foreclosure instrument, deeds or mortgages regarding the Property or from otherwise taking any steps whatsoever to deprive Plaintiff of ownership and/or possession in the Property, and in particular from proceeding with the sale of the Property scheduled for November 26, 2007.

This Temporary Restraining Order is effective immediately. As security pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, the deed of trust shall remain on the Property as security for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall be binding on the parties to this action and all other persons or entities who receive actual notice of this order.

Defendants Deutsche Bank National Trust Company, as Trustee for Morgan Stanley Loan Trust 2006-HE4, and Decision One Mortgage Company, LLC are **HEREBY ORDERED TO SHOW CAUSE** at 11:00 a.m. on **December 10, 2007** or as soon thereafter as counsel may be heard in United States District Court for the Southern District of California, Courtroom 14, located at 940 Front Street, San Diego, CA 92101, why you, your servicers, agents, assigns, employees, officers, attorneys, and representatives and those in active concert or participation with you or them, should not be restrained and enjoined pending trial of this action from engaging in or performing any act to deprive Plaintiff of ownership and/or possession of the Property, including but not limited to instituting, prosecuting, or maintaining foreclosure or sale proceedings on the Property, from recording any deeds or mortgages regarding the Property or from otherwise taking any steps whatsoever to deprive Plaintiff of ownership and/or possession in the Property, and in particular from proceeding with the sale of the Property.

*4 The briefing schedule for the order to show cause is as follows:

1. Plaintiff shall immediately serve Defendants by overnight mail with this order and all papers it has filed in support thereof. Proof of service shall be filed no later than November 26, 2007.
2. No later than November 28, 2007 at 4:30 p.m. Defendants shall file and serve by overnight mail a memorandum of points and authorities no longer than fifteen (15) pages and supporting evidence, if any, to show cause why a preliminary injunction should not issue.
3. No later than December 4, 2007 at 4:30 p.m., Plaintiff shall file and serve by overnight mail a responsive memorandum of points and authorities no longer than fifteen (15) pages and supporting evidence, if any.

IT IS SO ORDERED.

S.D.Cal., 2007.
Nichols v. Deutsche Bank Nat. Trust Co.
Slip Copy, 2007 WL 4181111 (S.D.Cal.)

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- [3:07cv02039](#) (Docket) (Oct. 19, 2007)
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